POH SWEE SIANG

v.

TRUSTEES OF LEONG SAN TONG KHOO KONGSI (PENANG) REGISTERED & ORS.

HIGH COURT MALAYA, PENANG
AJAIB SINGH J
[CIVIL SUIT NO. 17 OF 1984]
10 MARCH 1986

LANDLORD AND TENANT: *Ground tenancy of vegetable land - Ground tenancy of a house - Expanded the farm and building - Proprietary estoppel - Notice of termination of tenancies - Protection under Control of Rent Act 1966.*

TORT: *Trespass to land - Destruction of property - Defence - Right to remove unauthorised and illegal building - Section 7 Specific Relief Act 1950.*

CIVIL PROCEDURE: *Counterclaim - Possession of land and building - Remedies - Damages and Special Damages - Injunction.*

The plaintiff was a ground tenant of six acres of vegetable land on 22 May 1950 upon payment of RM9 rent and a registration fee of RM5. In 1964 he was given permission to erect a house in his vegetable land, at the ground rent of RM3 per month, registration fee of RM50 and be subjected to certain agreed conditions. Over the years, the plaintiff steadily expanded his farm and erected extra structures without prior written approval of Khoo Kongsi, the 1st defendant.

By notice dated 12 July 1976 the 1st defendant purported to terminate the tenancy of the vegetable land and by notice dated 30 June 1982 they purported to terminate the tenancy of the land where the house is situated.

In October 1982 the defendants by their agents or servants unlawfully entered the plaintiff's land, destroyed the vegetables and some structures on the land and threatened to forcibly evict the plaintiff.

The plaintiff sued the defendants for damages for trespass on his land and destruction to the vegetables and some structures on his land. He also sued for injunction to restrain them from entering the land. He contended that the two notices are invalid and ineffective as he is protected by the provisions of the Control of Rent Act 1966.

The defendants contended that they entered the land in exercise of the common law right to remove the unauthorised and illegal structures built on the land. They counterclaimed for possession of the six acres of land and all the buildings on it and for damages for being deprived of the letting value of the land and not being able to put up the flats for which the plans had already been approved.

Held:

[1] The plaintiff is not entitled to the protection of the Control of Rent Act 1966 in respect of the house as well as the six acres of vegetable land. The Act only applies to premises which were in existence at the end of January 1948. There was no such house on the land as at the end of January 1948.

[2] The two notices to quit the land and the house dated 12 July 1976 and 30 June 1982 respectively were valid and effective to terminate both tenancies. Therefore the plaintiff was to give up vacant possession of the six acres of land and to dismantle and remove his double storey house together with all the farm buildings which he has built on the land by 31 July 1986.

[3] The plaintiff's claim for damages for trespass on his land succeeded. He was the lawful tenant of Khoo Kongsi until these tenancies were terminated on 12 July 1976 and 30 June 1982 respectively. Thereafter Khoo Kongsi was entitled to repossess the land and require the plaintiff to dismantle his house and other buildings and move them out of the land by due process of the law by obtaining appropriate orders from the Court and not by taking the law into their own hands. Therefore, damages are awarded for trespass and special damages awarded for the destruction of the plaintiff's property by the defendants.

[4] The defendant's counterclaim cannot succeed in full. The defendants' counterclaim for possession of the six acres of vegetable land is allowed.

[5] Full costs of the proceeding awarded to the plaintiff.

Legislation referred to:
Specific Relief Act 1950, s. 7

For the plaintiff - Gurdial Singh Nijar, (Mohideen Abdul Kader & R. Meenakshi with him); M/s. Syarikat Mohideen Abdul Kader
For the defendants - C. Abraham (J.A. Yeoh with him); M/s. Shearn Delamore & Co.

JUDGMENT

Ajaib Singh J:

The plaintiff in this case sued the defendants for damages for trespass on his land and for an injunction to restrain them from entering the land. He also claimed damages for the loss of revenue from vegetable produce and for the loss of a water sprinkler system, a pigsty, a chicken coop and an attap hut.

The land in question is six acres in extent and is part of Sin Kang estate owned by the first defendants who have been letting out parcels of the estate to various people for the growing of vegetables on a commercial basis. From about 1976 onwards however the first defendants decided to develop Sin Kang estate and in due course the second and third defendants came into the picture for the construction of 6 blocks of 5 storey walk-in flats.

The plaintiff's case

The plaintiff's case is that he bought over the tenancy of this six acres of vegetable land with a double storey plank house on it from Khoo Chye Huat for RM1650 on 22 May 1950. On the same day he was registered by the first defendants as their tenant upon payment of RM9 rent and a registration fee of RM5. There were other structures on the land when he moved in on 22 May 1950 - five chicken coops and two pigstys. At the time of registration he was promised by the first defendants through their secretary that he could stay on the land indefinitely so long as he continued to pay the rent. The plaintiff was thus induced by the first defendants into believing that he could develop the land as he liked and so over a period of 30 years with the knowledge and consent of the first defendants he expanded the farm and the buildings thereon which are now worth approximately RM480,000.

By notice dated 12 July 1976 the first defendants purported to terminate the tenancy of the vegetable land and by notice dated 30 June 1982 they purported to terminate the tenancy of the land where the house is situated. The plaintiff says that both these notices are invalid and ineffective and that he is protected by the provisions of the Control of Rent Act 1966.

In October 1982 the defendants by their agents or servants unlawfully entered the plaintiff's land, destroyed the vegetables and some structures on the land and threatened to forcibly evict him. He has lost revenue for 2 years on 2½ acres of vegetable land - 200 katis of brinjals daily per acre per annum at 60 cents per kati. The defendants had also destroyed his water sprinkler system, one pigsty, one chicken coop and one attap hut - total loss being RM228,500. The loss of revenue from his vegetable land is continuing at approximately RM7,600 per month.

The defence and counterclaim

The defendants deny that the land and the buildings put up by the plaintiff on the land are subject to the provisions of the Control of Rent Act 1966. They agree that the plaintiff was a ground tenant of the land for the purpose of vegetable farming only and they deny that the first defendants had agreed that the plaintiff could stay on the land as long as he continued to pay rent and develop the land as he liked.

The plaintiff expanded his farm and built out-houses without the consent of the first defendants and in defiance of several notices and warnings to remove the unauthorised buildings and out-houses on the land issued by them and by the local authorities. The defendants entered the land in exercise of the common law rights of the first defendants to remove the unauthorised and illegal out-houses, sheds and structures which the plaintiff had built on the land. The defendants counterclaim for possession of the six acres of land and all the buildings on it and for damages for being deprived of the letting value of the land and not being able to put up the flats for which the plans had already been approved.

Findings

After giving due consideration to the lengthy evidence both oral and documentary and the submissions made by Counsel on behalf of the parties I have come to the following conclusions-

Control of Rent Act 1966

The plaintiff is not entitled to the protection of the Control of Rent Act 1966 in respect of the house in which he is now residing with his family as well as the six acres of vegetable land. The Act applies only to premises which were in existence at the end of January 1948. But I find that the plaintiff has not adduced sufficient and cogent evidence to discharge this burden of proof.

The plaintiff obtained the ground tenancy of the six acres of vegetable land in May 1950 having bought over this tenancy from the previous tenant Khoo Chye Huat for the sum of RM1650. The receipt issued by Khoo Chye Huat for this sum and the Khoo Kongsi receipt for the payment of RM9 rent on the six acres of vegetable land and RM5 as registration fee, both receipts issued on 22 May 1952, refer to vegetable land only. No mention is made of any building on the land.

It was well after the plaintiff was registered as a ground tenant on 22 May 1950 that mention is made of any house on the land in the Khoo Kongsi receipts. It was much later also that Khoo Kongsi allotted number 313 to a house on the land and in the sixties the local authorities allotted number 1026-R to this house.

Minutes of the Khoo Kongsi meeting dated 18 April 1950 state among other things that

> "Khoo Chye Huat said another plot of land, 6 acres in size, previously taken up by Ang Kow in his name for cultivation of tobacco for the past 8 years and 4 months since 1942. He wanted to know the ground rent payable. Khoo Ewe Aik said the new rate was fixed at RM2 per acre payable in advance. Tenancy agreement was renewable every two years. However, the Kongsi reserved the rights to repossess the said land anytime if required for its own use."

Khoo Chye Huat was not a member of the committee but had apparently gone there to report on several matters pertaining to the Khoo Kongsi land. In another paragraph of the same minutes it is stated that

> "Khoo Chye Huat came to the meeting hall and reported that he and Ang Kow had taken over an attap house and a 'long' of farm land from the previous tenant and had been tilling the said land for eight years and four months since 1942, paying a ground rent of RM12 per year for the house and the farm land."

It will be noted here that in the first paragraph quoted above there is no mention of any house on the six acres of land. The land is stated to be for the cultivation of tobacco since 1942 and no mention is made also of any other type of vegetables, or any chicken coops or pigstys. This is the land the tenancy of which was sold by Khoo Chye Huat to the plaintiff just over a month after the Khoo Kongsi meeting on 18 April 1950. In the second paragraph quoted above specific mention is made of an attap house. It is not an unreasonable inference therefore to draw from these two paragraphs that there was in fact no house of whatever type on the six acres of land in April 1950.

Again there is evidence that house No. 1026-R was first assessed by the local authorities in 1965 (Exhibit D63). Exhibit D63 is the official file of the Jabatan Nilaian dated 11 December 1976 on house number 1026-R. The documents in this file show that this house belonging to the plaintiff was placed in the assessment list for the first time with effect from 1 January 1965 and assessed at an annual value of RM72. And the house is described as - "Squatter type house of walls of 3 feet brick and the rest plank, roof of zinc and floor of cement. It has 3 rooms. Size is about 20' x 40'." It is also noted in this file that as at 1 January 1965 there was no water supply to the house.

I inspected the house and the six acres of land during the hearing of the suit together with the parties or their representatives and their Counsel. The rear portion of the house with the rear door appears to have been in all probability the actual front portion of the house. The house itself must have been a single storey and not a double storey house until first storey was added on at some later stage. The present front portion is of a stronger built and better shaped with a bigger door and windows and does not really fit in with the symmetry of the house structure thus giving the double storey house a rather odd shape. Also the approach unmettalled road does not lead to the present front portion but ends up at the present rear portion. The Khoo Kongsi number 313 is also stuck above the present rear door and not above the front door.

Several maps, plans and aerial photographs were put in evidence by the parties. I do not intend to go through all these in detail but I must say that on critical and minute analysis of these documents the probabilities are that there was no house on the six acres of land when the plaintiff bought over the tenancy and registered himself as a ground tenant with the Khoo Kongsi on 22 May 1950. So too with the conflicting oral evidence by the parties on this point. There is more to say for the non-existence of any house as at the relevant date than that there was one.

Exhibit D63 was put in evidence on behalf of the defendants through Lam Aun Cheng the Assistant Valuation Officer of the City Council. He described house No. 1026-R as stated in the file - squatter type, 3 feet brick and the rest plank walls, zinc roof, cement floor with 3 rooms and size 20' x 40' - as at 1 January 1965.

Lam Aun Cheng also produced a plan of house No. 1026-R prepared in his department some eleven years later in 1976 (Exhibit D64). This plan shows the house having cement floors, concrete walls and asbestos roof with six bedrooms - a marked improvement from what the house was in 1965. Lam Aun Cheng also said in evidence that in 1965 there were no poultry sheds or pigstys but in 1976 there were 16 chicken coops and 2 pigstys. There were also bathrooms in 1976, two stores and sheds. The stores which were side by side measured 90' x 40' and 76' x 26' respectively.

In the light of this evidence which I have enumerated above the plaintiff's evidence cannot be accepted that when he took over the tenancy of the six acres of vegetable land on 22 May 1950 there was a double storey plank house on the land, five chicken coops and two pigstys.

The ground tenancy of the six acres of land cannot have the protection of the Control of Rent Act as this land does not come within the definition of premises in the Act. In the first place as I have held on the evidence before me there was no house on the land as at the end of January 1948. Moreover, to come within the definition of premises under the Control of Rent Act, the land must have a connection with a house and occupied as such - like a compound of a house or garden forming part of the house area. But not so here - the six acres were specifically let out as vegetable land.

Notices to quit land and house

The two notices to quit the land and the house dated 12 July 1976 and 30 June 1982 respectively were valid and effective to terminate both tenancies. The 2½ months' notice to quit the six acres of vegetable land was not an unreasonable period of time for the plaintiff to harvest his vegetable crop and move out. Nor was the 2½ months' notice to quit the house unreasonable notwithstanding the three months mentioned in an agreement between the plaintiff and Khoo Kongsi dated 4 March 1964 (Bundle B p. 11). Moreover this agreement refers to a plank and attap hut 12' x 20' and not to the larger house No. 1026-R measuring 20' x 40'.

Proprietary estoppel and equity

On the issue of proprietary estoppel also the plaintiff has failed to adduce sufficient evidence in support. He says that when he was registered as a ground tenant in May 1950 the secretary of Khoo Kongsi gave him verbal approval that he could expand the land for pig rearing and vegetable gardening and that he could remain on the land indefinitely. The secretary and Khoo Chye Huat could not be called to give evidence as they had died well before this suit was filed in the High Court.

I am afraid there is hardly any evidence to find in favour of the plaintiff on this point. I cannot accept the bare word of the plaintiff in the light of other evidence in this case which is against him. There is evidence that on 14 March 1963 (Bundle B p. 7) he wrote to Khoo Kongsi seeking permission to repair his attap house No. 313. Then in 1964 he was given permission "to erect a house in his vegetable land" (Khoo Kongsi minutes dated 1 February 1964 - Bundle B p. 9) and again in the minutes of the Khoo Kongsi meeting on 29 February 1964 (Bundle B p. 10) it is stated that the plaintiff had agreed to the conditions for the approval

to erect the house - the ground rent of RM3 per month, registration fee of RM50 and to sign a legal document to give up the land and pull down the house if Khoo Kongsi needed the land without payment of any compensation. And pursuant to this approval the plaintiff signed a document dated 4 March 1964 (Bundle B p. 11) setting out the three conditions. The third condition was varied by providing for a period of three months' notice to be given to the plaintiff by Khoo Kongsi to demolish the house and vacate the land. The plaintiff also agreed in this document to adhere to all the conditions and rules of Khoo Kongsi pertaining to the tenants living in their Sin Kang estate.

The Khoo Kongsi notice dated 16 March 1963 (Bundle B p. 8) prohibits owners of houses on their land

> to repair or make alternations, extensions, enclosures, transfer of ownership, change attap roof, corrugated iron roof, asbestos roof, pigstys, poultry pens, including the building of new houses etc., unless prior permission in writing has been obtained from the Trustees of the Khoo Kongsi.

The plaintiff in his evidence in Court denied having received a copy of this notice but I think it is highly unlikely that he really did not receive it. He had been on the land for several years and had moved in with his family in 1963 and had been an active farm worker on the land. There is every reason to believe that in all probability he did receive this notice of Khoo Kongsi or at least had knowledge of the existence of the notice and of its contents. In the document dated 4 March 1964 (Bundle B p. 11) the plaintiff had agreed "to adhere to all the conditions and rules of the Leong San Fong Khoo Kongsi pertaining to squatters living in the Sin Kang estate".

Then again on 11 June 1968 the plaintiff signed a document (Bundle B p. 17) giving certain undertakings to Khoo Kongsi for allowing him to erect three poles for the installation of lighting in his house. In this document the plaintiff undertook to pay for any damage to any fruit trees as a result of erecting the three poles, to remove the poles should Khoo Kongsi require the place where the poles were to be erected and not to claim any compensation for the lighting installation in the event that the house is demolished.

In view of all this evidence it seems more probable therefore that the plaintiff was not given any blanket approval by Khoo Kongsi to occupy the land indefinitely and to do as he liked on the six acres of land but that he had to get prior written approval for erecting any structures on the land. And over the years the plaintiff steadily expanded his farm and built chicken coops and pigstys. The rearing of pigs and poultry appear to be complimentary activities to that of vegetable gardening for which purpose the six acres were originally let out and so it cannot be said that by expanding the farm as such the plaintiff had acquired a proprietary equitable right on the house and land. But as the evidence discloses the plaintiff erected extra structures without prior written approval of Khoo Kongsi in contravention of their notice.

There is also insufficient evidence to say that Khoo Kongsi acquiesced in the build-up of the farm. In fact Khoo Kongsi became somewhat alarmed at this expansion as the plaintiff was now contravening building regulations. Their notices to some tenants including the plaintiff to stop unauthorised structures went unheeded and the Kongsi had to bring this to the attention of the building department of the local authorities (Bundle B p. 22 - dated 17 May 1976). Several notices from the local authorities were sent to the plaintiff from January 1980 onwards to demolish some illegal structures but nothing seems to have been done by the plaintiff to comply with the notices.

Trespass

The last point to consider is trespass on the plaintiff's land and the demolishing of the plaintiff's vegetable land and some out-houses by bulldozers sent in by the 2nd defendants on 27 October 1982. In his evidence in Court the plaintiff said that about 30 to 40 persons with two bulldozers came to his land and destroyed more than one acre of vegetable land and in the process they destroyed the pipes of a sprinkler system which he had installed on the land to water his vegetables. Two ponds were also damaged. The bulldozers and the men came again over the next two days. The plaintiff said that three acres of vegetable land with brinjal plants were destroyed as well as a pigsty, a chicken coop and an attap hut. He replanted half an acre with brinjals thereafter but could not plant on the remaining 2½ acres because of the damage to the watering system and the ponds. Also the fear "that they would come back again and do the demolishing". The plaintiff said that he had in the past planted brinjals on a small scale but when brinjals were fetching good prices in 1982 he commenced planting brinjals on a large scale from August 1982. His loss of earnings he said for not being able to plant the remaining 2½ acres with brinjals was in the region of RM6,000 to RM7,000 per month.

The defendants do not seriously deny that their men and bulldozers entered and destroyed the vegetable land and some buildings but they contend that they had the right under the common law to remove unauthorised and illegal buildings on their land. The defendants also contend that despite their attempts to remove these unauthorised and illegal farm buildings they remain deprived of the use of the land and have thereby suffered loss and damage. They have in turn counterclaimed against the plaintiff for possession of the six acres of the vegetable land and the double storey house No. 1026-R together with other out-houses in the vicinity. They also claim damages against the plaintiff for the letting value of 2½ acres of vegetable land which had been converted by the plaintiff into a poultry and pig farm and the letting value of the land on which the double storey house stands.

The plaintiff here is on somewhat stronger grounds against the defendants in his claim for trespass and for the damage done to his vegetable land and buildings. The plaintiff was not an illegal squatter. He was the lawful tenant of Khoo Kongsi - of the six acres of land and the house - until these tenancies were terminated on 12 July 1976 and 30 June 1982 respectively . Thereafter, Khoo Kongsi was entitled to re-possess the land and require the plaintiff to dismantle his house and other buildings and move them out of the land. But this they had to do by due process of the law by obtaining appropriate orders from the Court and not by taking the law into their own hands.

> A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the law relating to civil procedure." (Section 7 Specific Relief Act 1950).

The plaintiff claims RM20,000 for the loss of the sprinkler system, RM10,000 each for the loss of a pigsty and a chicken coop and RM6,000 for the loss of one attap house. These sums are not unreasonable except for the value of the attap house. I saw this house when we all visited the farm and it appeared to be of a simple structure - a small attap hut - hardly worth more than RM2,000.

Much evidence was adduced in this case on the profits the plaintiff could have made on the sale of his vegetables planted on his land. The simple brinjal became a hot topic - its market value and how much of it could be grown on an acre of land. Having considered the conflicting evidence on this point I held that in all the circumstances of this case, including

the fact that the plaintiff's overhead expenses could not have been very high as the farm was run mainly by family members, net profits from the brinjal produce would be in the region of RM3,500 to RM4,000 a month from three acres under cultivation.

The plaintiff is entitled to damages for trespass against the defendants whose servants or agents wrongfully and illegally entered his six acres of land and bulldozed the land together with some structures belonging to him. The defendants acted in a very high-handed manner and they ought to be punished with an award of exemplary damages against them. The common law does not give them any right to disregard the due process of law. The plaintiff is a simple ordinary peasant while the defendants are rich and powerful. But might cannot always be right and it is the duty of the Court in a case like this to put the defendants in their proper place and tell them that they cannot do such things with impunity.

The defendants should also remember and have it on their conscience that it was a direct result of their action by bringing in the bulldozers that trouble arose in Sin Kang estate culminating in the unfortunate death of a female farm worker Tan Siew Kee as a result of police firing in restoring law and order in the estate.

The defendants counterclaim cannot succeed in full. They are entitled to possession of the six acres of land and nothing more. The double storey house and all other structures on the land belong to the plaintiff and on no account can the defendants lay any claim on them.

Conclusion

In the event therefore I propose to make the following orders which reflect the conclusions I have arrived at in this case:

1. The defendants to pay the plaintiff by way of special damages RM42,000 for the loss of the water sprinkler system, the pigsty, the chicken coop and the attap hut and a sum of RM135,000 for the loss of vegetable produce on 2½ acres of land for 3 years and 9 months at the rate of RM3,000 per month.
2. The defendants to pay a sum of RM150,000 to the plaintiff as damages for trespass.
3. The defendants' counterclaim for possession of the six acres of vegetable land is allowed.
4. The plaintiff to give up vacant possession of the six acres of land and to dismantle and remove his double storey house together with all the farm buildings which he has built on the land by 31 July 1986.

Costs

In the exercise of my discretion I award full costs of the proceedings - claim and counterclaim - to the plaintiff having taken into account all the circumstances of the case including the conduct of the defendants in the manner they went about to gain possession of the six acres of land.

Also found at [1988] 1 CLJ 526